

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 399 of 1997
with
Civil Revision Application No.400 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

MADHUR GARMENTS THRO' PROP. HARMANCHAND CHUNILAL SHAH

Versus

HASMUKE SHOPPING CENTRE

Appearance:

MR MB GANDHI for Petitioner

MR RJ SHARMA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 01/07/97

ORAL JUDGEMENT

Rule. Mr.R.J. Sharma waives service of rule on behalf of the respondents.

In the facts and circumstances of the case and with the consent of the learned Advocates appearing for

the parties, petitions are finally heard today.

Petitioner in Civil Revision Application No.399 of 1997 is the original plaintiff, who filed Civil Suit No.2610 of 1993, to recover a sum of Rs.53,172.53 and the said suit was decreed on 22nd September, 1994. The plaintiff-petitioner thereafter preferred Precept Application, purporting to be under Section 46 of the Code of Civil Procedure, being Precept Application No.314 of 1995, on 10th April, 1995. Ahmedabad City Civil Court issued precept on 20th April, 1995 on the District Court at Himatnagar for the decretal sum, interest, costs, etc., amounting to Rs.68,996/-. Accordingly, goods worth Rs.74,910/- was attached in execution of the said precept application proceedings as per the Panchnama made by the Court Official on 16th October, 1995. The application to sell the said goods was submitted by the plaintiff-petitioner in respect of the said goods under attachment.

It appears that the respondents submitted an application for taking the attached goods back following the Application Exhibit 13, contending, inter alia, that the goods taken into attachment and carried by the plaintiff-petitioner was worth Rs.5,91,000/-. It was alleged that less value of the attached goods was shown in the Panchnama with an ulterior motive. The application Exhibit 13 was decided on 20th November, 1995. However, the value of the goods in question was not considered. It was ordered to return the goods to the respondents on depositing Rs.75,000/-. By the Application Exhibit 15, the respondent made a grievance that the goods, though ordered by the Court to be returned, was not so returned. A Court Commissioner was appointed for the purpose of returning the goods to the respondent. The respondent also lodged a criminal complaint in respect of the aforesaid event, which was disposed of. By an application dated 30th October, 1995, the respondents complained to the District Judge, Himatnagar, that the Bailiff Mr.Suthar had misappropriated the goods worth Rs.5,91,000/- and all the goods, which were attached, were not shown in the Panchnama. The respondents had preferred Civil Revision Application No.129 of 1996 in this Court against the common order dated 29th December, 1995, passed below Applications Exhibits 15, 18, 24 and 27 by the learned Judge of the City Civil Court, Ahmedabad. By the order dated 27th February, 1996, this Court (Coram : S.D. Shah, J.) directed the learned City Civil Judge to hold an enquiry about the allegations of the opponents and directed that both the judgment debtor and judgment

creditor should be given the opportunity to produce evidence.

During the course of the enquiry by the Court of the learned City Civil Judge, Ahmedabad, pursuant to the aforesaid order passed by this Court, the petitioner submitted an application Exhibit 125, praying that witness summons be issued to the concerned person for production of the enquiry report in respect of the enquiry conducted by the learned Civil Judge (Senior Division), in connection with the complaint of the petitioner as well as the oral evidence and documentary evidence produced before the said enquiry proceedings. By the order dated 13th January, 1997, the learned Judge of Ahmedabad City Civil Court No.20 rejected the said application. The said order, rejecting Application Exhibit 125 is under challenge in the present Revision Application.

While rejecting the application Exhibit 125, the learned Judge had observed that the application was vague and no relevance was shown by the judgment creditor as to why the documents were required to be produced in the proceedings. The petitioner, therefore, submitted application, Exhibit 127, giving the details of the documents and making an attempt to clarify the vagueness, if any, of the application Exhibit 125. By the Application Exhibit 127, the relevant facts and the entire history of the proceedings were disclosed, reiterating the prayer that witness summons be issued and the record of the enquiry be produced in the Court. The learned Judge also rejected the application Exhibit 127 and as such, the order passed below Application Exhibit 127 is also assailed in Civil Revision Application No.399 of 1997.

In Civil Revision Application No.400 of 1997, the petitioner has challenged the legality of the order dated 27th February, 1997 passed by the learned Judge of Ahmedabad City Civil Court No.20 in the above Precept Application No.314 of 1995, whereby she partly allowed the application, Exhibit 129, directing the respondents to produce copies of the sales tax returns of the year 1994-'95 and 1995-'96. The learned Judge of the Executing Court rejected thereby the prayer in regard to production of Books of accounts, as detailed in the Application Exhibit 129.

Mr.Gandhi, learned Advocate appearing for the petitioner, has made the grievance that by the orders rendered in the aforesaid Civil Revision Application

No.129 of 1996, the petitioner-plaintiff is also saddled with the liability to show that he is not responsible for quoting the lower price of the goods that were attached. In order to rebut or controvert the evidence led by the respondents in respect of the price of the attached goods, it would be necessary for the petitioners to show the real value of the goods from the relevant books of account of the respondents. The reason assigned by the learned Judge is the denial of the suggestion by the Manager of the State Bank of Saurashtra, Himatnagar as per his evidence at Exhibit 74 in respect of the loan facility to the opponent. The regular submission of statement by the respondents may not have any nexus with the value of the goods attached. Mr.Sharma, appearing for the respondents has submitted that the books of account for the year 1991-'92 would not be relevant for showing the price of the goods because the same were attached in the year 1993 and thereafter. In that event, the books of account for the year 1993-'94 to 1995-'96 would be relevant to show the value or price of the goods in question.

Mr.Sharma, appearing for the respondents, has no objection if the materials and documents sought to be produced by the petitioner are produced in the enquiry proceedings before the learned Judge of the Ahmedabad City Civil Court. In fact, while disposing of the aforesaid Civil Revision Application No.129 of 1996, this Court (Coram : S.D. Shah, J.) has directed that the executing court shall hold enquiry by permitting the judgment debtor and judgment creditors, i.e. the parties herein, to produce necessary evidence, including the Panchnama drawn by the plaintiff and other documents and shall decide the question as to whether the goods of larger value were seized by the Court Bailiff and in case a finding is reached, then to take appropriate action for return of the goods or for payment of value thereof to the judgment debtor. When the Enquiry report is lying with the Court of Civil Judge (Senior Division), Himatnagar and if those enquiry papers and documents are sought to be brought, it would be in furtherance of the enquiry proceedings. In the facts and circumstances of the case, the learned Judge should not have rejected the applications Exhibits 125 and 127. It appears that the papers, sought to be produced, would be relevant.

In the course of enquiry by the learned Judge of the Ahmedabad City Civil Court, there was no question of submitting any enquiry report or documents in regard to the disciplinary action taken against the Bailiff and no such enquiry papers are sought to be produced by the petitioner-plaintiff. It appears to be a misreading of

the Application Exhibit 125 by the learned Judge.

In view of the above, the impugned orders passed below Applications Exhibits 125 and 127 of the Precept Application No.314 of 1995 are quashed. Both the applications Exhibits 125 and 127 stand granted. The learned Judge of Ahmedabad City Civil Court No.20 shall proceed with the enquiry proceedings by issuing summons to the Bailiff Shri Suthar for production of necessary documents, as requested by Application Exhibit 125.

Civil Revision Application No.400 of 1997 also stands allowed to the limited extent of granting application Exhibit 129, by directing the respondents to produce the relevant books of account for the year 1993-'94 to 1995-'96. The impugned order passed below application Exhibit 129 shall stand modified accordingly. Rule is accordingly made absolute in each of both the Civil Revision Applications, with no order as to costs.

(apj)